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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indonesia: For justice to be more accessible to victims, an anti-torture law is needed*

1. The Asian Legal Resource Centre (ALRC) and Padang Legal Aid Institute (LBH Padang) wish to bring the attention of the Human Rights Council (HRC) to the matter of Indonesia's urgent need to adopt a separate anti-torture law. Both organisations welcomed consideration of the issue of torture during the HRC's 25th session and the significant work of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We expect the Indonesian government to extend its cooperation to the Rapporteur's mandates by inviting him to conduct a follow-up visit to the country.

2. Indonesia has been a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) for almost 16 years. Its Constitution firmly establishes that freedom from torture is a basic right which should not be limited in any circumstances. Such provision can also be found in a number of other legislations – including Laws No. 39 Year 1999 on Human Rights, No. 26 Year 2000 on Human Rights Court, and No. 12 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights. However, as rightly pointed out by the Special Rapporteur in his last report after visiting Indonesia, those legislations do not provide effective mechanisms to prevent and punish the practice of torture. Although the Human Rights law provides a definition of torture, it does not establish an effective individual complaint mechanism. The Indonesian human rights court's jurisdiction to examine torture cases is limited to those perpetrated in the context of genocide or crimes against humanity.

3. The continuous failure of Indonesia to establish an effective prevention and punishment mechanism is evidenced by the absence of a criminal provision prohibiting torture. This amounts to a violation of Article 2 of CAT and disrespects the Special Rapporteur's recommendations in his 2007 report. Criminal trial on torture cases in Indonesia, therefore, has so far been based on general criminal provisions under the Penal Code. They are notably Articles 351-358 on maltreatment, which elements are not in accordance with the torture definition provided by the Convention.

4. Article 351 (1) of the Penal Code concerning maltreatment, for instance, was used for charging and convicting three police officers in the *Sijunjung* case. In this case, the victims – who were two under-aged brothers named Faisal and Budri – were found dead, hanging in the toilet of the Sijunjung sub-district police station in 2011. After being held for almost a week in the police station their bodies showed various wounds and bruises. Similar criminal provision was charged to four police officers responsible for torturing Erik Alamsyah to death in 2011 and two police officers who were involved in the torture and shooting of 23-year old Yusli in Tangerang. Recently in February 2014, two prison guards of the Solok Correctional Facility beat up and electrocuted an inmate, Riko Yeyandra. They were also indicted under the article on maltreatment. In accordance with the Committee against Torture's General Comment No. 2, the ALRC and LBH Padang are of the opinion that the prosecution, indictment and conviction of perpetrators based on the maltreatment article in these cases are contrary to Indonesia's obligations under the anti-torture convention.

5. The ALRC and LBH Padang noted the Indonesian government's plan to prohibit torture in its draft revision to the Penal Code (RKUHP). However, the unreasonably long revision process has led both organisations to question the plan's suitability to address such an urgent problem as torture. More importantly, the ALRC and LBH Padang doubt that a single criminal provision prohibiting torture under the Penal Code alone will increase the accessibility of justice for victims and their families. More than merely penalising torture, the ALRC and LBH Padang firmly believe that a special criminal procedure on torture is equally important but also needs to be regulated.

6. One of torture's special features which distinguish it from other crimes is that such abuse is, by definition, perpetrated by state officials. This feature makes the general provisions under the Criminal Procedure Code ineffective when they are used for investigating torture cases and for prosecuting, trying and convicting perpetrators. Lodging a criminal complaint with the police under the Criminal Procedure Code might work for other cases but not for torture – an abuse which, in Indonesia, is practised mostly by the police. The ALRC and LBH Padang note that the police hardly follow up complaints on torture except in extraordinary circumstances, such as when the victim is dead and/or if there is a strong public demand for an investigation. Yet even in such cases, the investigation conducted typically tends to protect the perpetrators. They do this by selectively picking the charges and limiting the number of the accused, as evidenced in the *Sijunjung* case.

7. *The Sijunjung* case was 'investigated' by the police for almost a year. Despite the death of the victims in this case, the police refused to charge the accused officers with murder (Article 338 of the Penal Code) or maltreatment resulting in death (Article 351 (3)). The tendency by the Police to protect the perpetrators was also apparent from the fact that there were only four officers brought to court. This was eight less than the total number of officers disciplined internally due to their involvement in torturing the two under-aged brothers.

8. Indonesian Criminal Procedure Code imposes the burden of proof on the prosecutor. It requires at least two categories of legitimate evidence for an accused to be convicted. In practice, witnesses' testimonies are essential in concluding guilt. In ordinary criminal cases, such provisions are meant to ensure that innocent people are not wrongly convicted and sentenced. In torture cases, however, such provisions are excessively burdensome for the prosecutors and make torture too difficult to prove. As an example, in the *Sijunjung* case, the prosecutor was struggling to prove that the victims had not committed suicide but were hung by police officers. Eventually, the District Court eventually ruled that the officers were not responsible for the death of the victims. The reason cited was the absence of witnesses' testimonies, despite the obvious fact that no non-police officers would be able to witness the crime as it took place in a police station.

9. An anti-torture law is furthermore needed, because the existing laws in Indonesia – including the Criminal Procedure Code and its draft revision – have failed. No clear procedures were provided for the judges on measures to be taken when a torture claim is made by an accused in a criminal case. Due to this vacuum in procedures, judges tend to overlook such claims and dismiss them without proper examination, as in the recent case of *Six Street Singers* in Jakarta. In this case, six street singers – four of them minors – were charged and tried for murder. The ALRC has received information from the Jakarta Legal Aid Institute (LBH Jakarta), that the charges were fabricated. There were reports indicating that, during the investigation of the six singers by officers of the Jakarta Metropolitan Police, they were beaten, blindfolded, electrocuted and forced to confess to murder.

10. During the trial, the street singers retracted their statement made under police coercion and claimed they were subjected to torture. The judges responded by summoning two officers who had nothing to do with the alleged torture. They concluded that torture had not taken place. They dismissed the singers' claim after merely asking them whether the summoned officers were the ones who tortured them. Four of the under-aged singers were found guilty and sentenced to three to four years of imprisonment, whereas the rest were given seven year prison sentences. Their torture complaint before the court of law did not lead to any criminal investigation.

11. The enactment of an anti-torture law can be used as a means to revise the existing law and regulations regarding monetary compensation for victims of torture and their families. Although there are several provisions on monetary compensation for victims of human rights violations under Law No. 13 Year 2006 concerning Witnesses and Victims Protection and Government Regulation No. 44 Year 2008, many of them are not in accordance with international standards. Among others, the existing laws and regulations established that compensation given to the victims should only cover pecuniary damage. They also imposed onerous requirements for the victims and their families by asking them to provide receipts, giving the impression that the payment is more cost reimbursement than compensation. In the *Erik Alamsyah* case, the family's request for compensation was dismissed due to the failure to provide receipts for the court.

12. There is a lack of clarity under the existing laws and regulations on the compensation mechanism for torture victims. This forces the judges to examine compensation requests based on their own interpretation that may not be in accordance with international human rights standards. In the *Sijunjung* case, for example, the judges refused the family's compensation request as it was not proven that they died from torture. The judges therefore interpreted that compensation could be given to the family only if the victims had died from torture, running contrary to General Comment No. 3 of the Committee against Torture.

13. Given the above arguments, the ALRC and LBH Padang are calling for the HRC to intervene to urge the Indonesian government to:

a. Comply with its international obligations under the anti-torture convention, *inter alia,* by enacting a separate, comprehensive law on anti-torture. The law should declare torture as a crime punishable with proportionate penalties. It should also provide effective mechanisms to prevent and punish torture so justice is more

accessible to victims and their families. The enactment of the law should be seen by the government as a chance to revise existing laws or legal provisions concerning compensation for torture victims which are not in accordance with international human rights standards;

b. Invite the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to conduct an official visit to Indonesia. This visit should assess the current situation in the country as well as the government's compliance with the recommendations made by the Rapporteur in his 2007 visit.

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*The Padang Legal Aid Institute (LBH Padang) Indonesia, NGO(s) without consultative status, also share the views expressed in this statement.